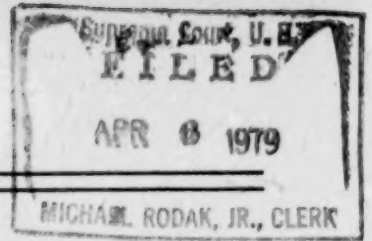


APPENDIX



**In the Supreme Court of the United States**  
OCTOBER TERM, 1978

No. 78-777

UNITED STATES OF AMERICA,

*Petitioner,*

—v.—

KEITH CREWS

ON WRIT OF CERTIORARI TO THE DISTRICT  
OF COLUMBIA COURT OF APPEALS

PETITION FOR CERTIORARI FILED NOVEMBER 10, 1978  
CERTIORARI GRANTED FEBRUARY 21, 1979

**In the Supreme Court of the United States**

OCTOBER TERM, 1978

**No. 78-777**

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UNITED STATES OF AMERICA,

*Petitioner,*

—v.—

KEITH CREWS

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ON WRIT OF CERTIORARI TO THE DISTRICT  
OF COLUMBIA COURT OF APPEALS

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**I N D E X**

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Portions of the one volume transcript containing both the suppression hearing and the trial held on April 22, and 23, 1974 in the Superior Court of the District of Columbia (pages 3-30, 36-40, 48-64, 79-81, 97-100, 106-120, 122-126, 132-137 and 143-149) .....	8
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SUPERIOR COURT OF THE  
DISTRICT OF COLUMBIA

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Case No. 2679-74

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UNITED STATES/DISTRICT OF COLUMBIA

vs.

KEITH CREWS

---

RELEVANT DOCKET ENTRIES

---

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DATE

PROCEEDINGS

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1-16-74 Defendant arraigned, informed of Right to Counsel  
and informed of complaint, defense counsel appointed,  
defendant ordered to appear in a lineup on January 21,  
1974.

SUPERIOR COURT OF THE  
DISTRICT OF COLUMBIA

Case No. 10258-74

UNITED STATES

v.

KEITH CREWS

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
2-22-74	Indictment filed. Assigned to Judge Campbell, arraignment set for 3-8-74 at 10:00 a.m.
3- 8-74	NORMA J. HOUGHTON, OFFICIAL COURT REPORTER. Defendant informed of complaint(s) and right to Counsel, plea of guilty entered, defendant placed on P.R., Third Party Custody. Case continued to 3-29-74 for Status Hearing.
3-26-74	ROSE MOLlicHELLI, OFFICIAL COURT REPORTER. Status Hearing held. Case continued to 4-5-74 for another Status Hearing.
4- 5-74	ARTHUR B. REID, OFFICIAL COURT REPORTER. Status Hearing held. Trial for 4-22-74, bond to remain.
4-22-74	ARTHUR B. REID, OFFICIAL COURT REPORTER. Defense Motion to Suppress Identification heard and the findings by the Court there did not exist probable cause on the date of, for the Officer to arrest the defendant, therefore the Court Suppress the Photos taken by

DATE	PROCEEDINGS
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the Police Officer, and the Photos of the lineup. (2) The Court will allow the complaining witnesses to make in-Court identification. The Jury impanelled and sworn at 4:15 p.m., after opening statements by both Counsel, the Court adjourned. Case continued to 4-23-74.

4-23-74 ARTHUR B. REID, JR., OFFICIAL COURT REPORTER. Testimony resumed at 9:40 a.m. at the close of Government's case, defense motion for Motion for Judgment of Acquittal denied. The Jury began deliberation at 4:30 p.m., the jury reached its verdict at 6:30 p.m., verdict guilty as to armed Robbery; the Jury did not consider counts "B" & "C", the Jury returned its verdict as to counts (4) not guilty; "5" Not guilty; "6" Not guilty; "7" Not guilty; "8" Not guilty, bond to remain. Report and sentence date 5-24-74.

5-24-74 JOHN G. BYERS, OFFICIAL COURT REPORTER. The defendant is sentenced to (armed robbery) Imposition of Sentence Suspended Probation for (4) Four Years under 5010(A). Conditions:

(1) Complete High School, and any other conditions imposed by probation.

(2) Remain in Household of Parents, the Probation Department to submit a report every (6) Six Months.

6-3-74 NOTICE OF APPEAL FILED THIS DATE. eep



## DISTRICT OF COLUMBIA, COURT OF APPEALS

Case No. 8507

KEITH CREWS, APPELLANT

v.

UNITED STATES, APPELLEE

## RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
6-10-74	Preliminary record.
7-29-74	Transcript of Record TRC.
8- 1-74	Supplemental record (242 pages of transcript).
1-15-75	Order extending appellant's time to file his brief to Feb. 10. No further extensions of time will be granted appellant for filing said brief. (Ky)
2-20-75	ORDER directing counsel for appellant to file a statement on or before March 3, 1975, indicating why he has failed to file a brief or some appropriate motion. (Ky)
2-28-75	Motion of appellant for leave to file brief, time having expired (m-28).
3- 4-75	Clerk's order granting appellant leave to file brief.
3- 4-75	Appellant's brief. (m-28) List (m-25)
4- 3-75	Clerk's order granting appellee ext. to file brief to May 2.
5-16-75	Clerk's order granting appellee leave to file brief.

DATE	PROCEEDINGS
5-16-75	Appellee's Brief. (m-5)
7- 8-75	Appellant's reply brief. (m-3)
7-16-75	ARGUED before Judges Fickling, Nebeker and Harris.
2-16-77	OPINION Per Associate Judge Stanley S. Harris. Dissenting opinion per Associate Judge Austin L. Fickling. Judgment affirming the judgment on appeal.
3- 2-77	Petition of appellant for an ext. to Mar. 16 to file for rehearing en banc (m-2) GRANTED/cog
3-16-77	Motion of appellant to extend time to file petition for rehearing en banc to March 23rd (m-16) GRANTED (COG)
3-23-77	MANDATE ISSUED
3-23-77	Motion of appellant to extend time to file petition for rehearing en banc to March 30th (m-23) GRANTED (COG)
3-30-77	Motion of appellant to extend time to file petition for rehearing en banc to April 6th (m-30) GRANTED (COG)
4- 6-77	Petition of appellant for rehearing and/or suggestion for rehearing en banc (m-6)
5-12-77	ORDER vacating the mandate of March 23, 1977 and the Judgment of February 16, 1977. This cause shall be scheduled for argument en banc at a future date, etc. (Judges Newman, Kelly, Kern, Gallagher, Nebeker, Yeagley and Harris and Mack)
5-13-77	Mandate returned from Clerk, Superior Court per order
10- 3-77	Motion of appellee for permission to file supplementary memorandum (p-3)
10- 3-77	ORDER granting appellee's motion for permission to file supplementary memorandum (Nw)

DATE	PROCEEDINGS
10- 3-77	Supplemental Memorandum (p-3)
10- 5-77	ARGUED EN BANC before Judges Newman, Kelly, Kern, Gallagher, Nebeker, Yeagley, Harris, Mack and Ferren.
10-13-77	Motion of appellee for leave to file supplemental memorandum (p.13)
10-18-77	ORDER granting appellee's motion for leave to file lodged supplemental memo and indicating counsel for appellant may file memo in response within 10 days (Nw)
10-18-77	Supplemental Memorandum
10-31-77	Motion of appellant to extend time to file response to supplemental memorandum to Nov. 7th (m-31)
11- 4-77	ORDER granting appellant's motion for extension of time within which to file response to government's supplemental memorandum to Nov. 7. (New)
11- 7-77	Motion of appellant to extend time to file response to supplemental memo to Nov. 17th (m-7)
11-16-77	ORDER granting appellant's motion to extend time to file response to supplemental memo to Nov. 17th. (New)
11-30-77	Motion of appellant for leave to file response to appellee's supplemental memorandum (m-30)
12- 7-77	Granted (Nw)
12- 7-77	Appellee's Supplemental Memorandum.
6-14-78	OPINION for the Court by Judge Ferren, with whom Judge Newman, and Judges Kelly, Kern, Gallagher, Yeagley and Mack, concur.  Dissenting opinion by Judge Nebeker, with whom Judge Harris concurs.  Dissenting opinion by Judge Harris, with whom Judge Nebeker concurs.

DATE	PROCEEDINGS
7- 6-77	MANDATE ISSUED
11-16-78	Notice of filing petition for writ of certiorari dated November 10, 1978 in Supreme Court. Supreme Court No. 78-777.

PORTIONS OF TRANSCRIPT HEARINGS  
APRIL 22 AND 23, 1974

[3] PROCEEDINGS

THE DEPUTY CLERK: Case of United States versus Keith Crews, Docket Number 10258-74.

THE COURT: If you need more time to talk to your client, Mr. McHale, I'll give it to you.

MR. McHALE: We're ready to go forward today, Your Honor. The trial is scheduled for today and there is an identification motion which is set prior to trial.

THE COURT: Are you ready?

MR. McHALE: Yes, Your Honor.

MR. BENNER: The Government's ready, Your Honor.

THE COURT: Very well, proceed.

MR. BENNER: Your Honor, Carol Owens will be our first witness, Your Honor.

Thereupon,

CAROL OWENS,

having been called as a witness for and on behalf of the Government, and having been first duly sworn by the Deputy Clerk, was examined and testified, as follows:

DIRECT EXAMINATION

BY MR. BENNER:

Q. What is your full name, Miss Owens?

A. Carol Owens.

Q. And where do you live, Miss Owens?

A. At the present time I'm living in Spokane, Washington.

[4] Q. On January 3rd 1974, were you in the District of Columbia?

A. Yes, I was.

Q. And why were you here?

A. Our school is under a system called 414. That's numerals. One part stands for short term class where

we intensively study one system in particular. And my one subject that I was studying was government, and I did this by coming back to the District of Columbia to study the Government firsthand.

Q. At around between 11:00 o'clock in the morning and noon were you at the Washington Monument on January 3rd?

A. Yes, I was.

Q. And do you remember about 11:30 exactly where you were?

A. At 11:30 I was heading towards the bathroom to utilize the facilities there.

Q. Whereabouts is this bathroom?

A. It's the bathroom that's kind of down at the bottom of the hill. Like there's the monument and then there's a bathroom or rest station down at the bottom of the hill off to the side of the monument.

Q. And what happened while you were using this facility?

A. This guy came in and within a period of about five to ten minutes he took \$10 from me at gunpoint.

[5] Q. Where exactly were you when this robbery took place?

A. I was in a stall utilizing the facilities.

Q. Would you tell us when you first noticed there was someone in there?

A. I was sitting and just about getting ready to get up and leave when I saw two eyes peering—I was in the stall right next to the wall and like there's a little crack or space about yea big (indicating), and I saw the man's eyes looking through the stall and I recognized the eyes as being a man's. And I then became really scared.

Q. Did this person say anything to you?

A. Not at that point. But after our eyes met he reached his hand on top of the door and asked me to let him in.

Q. What did you do?

A. I asked him—I said, "No, please don't," or something to that effect, and after that he asked me for \$10, and I lied and I said that I didn't have it. Then he pointed the gun over the door and I stopped lying and gave him the \$10.



Q. What happened after you gave him the money?

A. He asked me for \$10 more and I told him this time I honestly did not have \$10 more, and he didn't believe me. So he then got up on top of the toilet in the stall right next to mine and looked over. And I opened up my wallet and [6] I showed it to him. I also opened my purse, and I even offered him a Traveler's Check, but he told me he didn't want any checks.

Q. What happened after he indicated—you indicated that you didn't have any money more?

A. He got out of the stall next to mine and asked me for entrance into my stall. And then knowing that he had a gun and being scared to death that he was going to do something to me, I let him in.

Q. Then what happened?

A. He kind of made a motion toward the zipper of his pants and I asked him—I pleaded with him not to rape me. And he made a motion towards the hem of my dress and I flinched away, and then he asked me—I can't remember the exact order of things, but he then asked me if I'd suck his penis, and I told him not to make me do that. He asked me if he could feel my breasts, and I didn't actually see the gun then, but I was so scared that he was going to hurt me or hurt me more if I didn't let him do anything, so I let him feel my breast. Then he asked me if he could suck my breast and he reached towards the button my blouse and I flinched away. I said, "Please, don't make me do that." And I asked him to leave, and he left saying telling me to wait there for 20 minutes or he was going to come back and shoot me.

Q. Would you tell us what the lights inside of the [7] ladies comfort station were like?

A. Well, they are very similar—like they were fluorescent. The lighting was just a little bit darker than this (indicating), but not very much.

Q. Were you able to see fairly well inside there?

A. Yes, I was.

Q. Did you get a good look at the face of the person who attacked you?

A. Yes, I did.

Q. How long a period of time would you estimate that you were able to see his face?

A. A minute and a half to about two minutes while he was in the stall.

Q. Could you describe what that person looked like.

A. He was about five five to five eight; very dark complexioned. He didn't have any wrinkles in his face. I surmised that he was about 16 to 18 years old because he didn't have any wrinkles in his face and he had a pea cap on so I could see like he eyebrows. And he had eyes that were kind of round but were kind of long.

Q. What color would you describe him as?

A. He was darkly complected.

Q. Did you notice what clothes he had on?

A. Yes. He had kind of a loose or a sloppy raincoat on and a V-neck sweater with a T-shirt on underneath, and [8] his pants seemed like they were kind of loose. But I noticed they weren't Levi's.

Q. After this occurrence was over, did you notify the police?

A. Not immediately, no.

Q. Did there come a time when you did notify the police?

A. Yes. About 20 minutes after it happened.

Q. Did the police come and talk to you about it?

A. Yes.

Q. And this offense took place on the 3rd of January; is that right?

A. Yes, it did.

Q. Do you remember being showed, the next day I believe it was, on the 4th. Excuse me. What time was this when this attack took place?

A. About 11:45.

Q. In the morning?

A. Yes.

Q. Do you recall being shown pictures of possible suspects after this offense occurred?

A. Yes, I do, at the Metropolitan Police Department Headquarters.

Q. Do you remember about how many pictures you saw?

A. I think the police estimated about a hundred.



Q. Did you see the picture in there of the man that [9] committed this offense?

A. I saw a picture of someone who looked like him but I really didn't—I rated it about an eight.

Q. About an eight? Would you tell us what you mean by about an eight?

A. Well, on a scale of about one to ten I would rate it at about an eight. It looked really a lot like him but it really wasn't exactly like him.

Q. So your conclusion was that it was or was not the man?

A. It was not the man.

Q. Do you remember talking to a Detective Orr on January 10th 1974?

A. Yes.

Q. Do you remember he showed you some pictures of possible suspects?

A. Yes. At the Park Police Headquarters.

Q. Did you pick out from that group of pictures one person that you said committed this offense?

A. Yes, I did.

MR. BENNER: Could I have this marked as Government's Exhibit 1A and 1B for identification, please.

(Government's Exhibit 1A and 1B for identification were duly marked.)

BY MR. BENNER:

[10] Q. At the time you picked out these pictures and Detective Orr showed them to you, do you know what Detective Orr said to you before you looked at them?

A. He just said—Well, as a matter of fact, no, I don't. He just said look at the pictures. And there were some pictures there that he wanted me to see, and I looked at them.

Q. Did he indicate any particular picture for you to focus on?

A. No.

Q. I show you what has been marked as Government's Exhibit 1A and B for identification. Would you tell us what they are, please.

A. These are the pictures that Detective Orr showed me.

Q. Did you pick out a picture from those, and if so, would you tell us what picture it was.

A. I picked out Number 6.

Q. Did you go to police headquarters on January 21st of this year and attend a lineup?

A. Yes, I did.

Q. And did you pick out someone from that lineup as having committed this offense?

A. Yes.

Q. And do you remember what number shield he was wearing?

A. I believe it was Number 7.

MR. BENNER: May this be marked as Government's [11] Exhibit Number 2, please.

(Government's Exhibit 2 for identification was duly marked.)

BY MR. BENNER:

Q. I show you Government's Exhibit Number 2 for identification. Would you tell us what this is please.

A. This is the lineup on that night.

Q. And Number 7 is the person in that lineup that you picked out?

A. Yes.

Q. Would you take a look around the courtroom right now, please, and tell us if the man that robbed you on January 3rd is presently in the courtroom, please.

(A pause.)

A. It's that guy sitting over there (indicating).

MR. BENNER: May the record reflect the witness has indicated the defendant?

THE COURT: The record will reflect the witness has identified the defendant as being the person who robbed her.

MR. BENNER: No further questions of the witness, Your Honor. I do have quite a bit of Jencks material, Your Honor, and I would like to indicate for the record that I am giving Mr. McHale the Grand Jury testimony of this witness, other witnesses, and Grand Jury sum-

maries, and an individual statement of Miss Owens, and numerous Park Police reports, [12] Your Honor. And also a Park Police report of approximately seven pages. And also a Park Police report of about five pages by Detective Ore. These reports relate to these two incidents.

MR. McHALE: Your Honor, will the Court indulge me briefly while I have an opportunity to look through these. I haven't had a chance to look through them before.

THE COURT: How long do you need?

MR. McHALE: Ten minutes, Your Honor.

THE COURT: Do you have anything else?

MR. BENNER: Yes. I have some other material.

THE COURT: Well, why don't you give it to him all at once. You know you have to give it to him anyway. Why don't you give it to him now and save some time?

MR. BENNER: Yes. I have a copy here also of the radio run that was given on the day of the offense—the first offense. And I believe, Your Honor, that's all the Jencks material I have.

THE COURT: Very well. I'll give you ten minutes.

(Whereupon, the proceedings were recessed at approximately 11:30 o'clock a.m.)

(Whereupon, the proceedings were resumed at approximately 11:40 o'clock a.m.)

THE COURT: Are you ready to proceed?

MR. McHALE: Yes, Your Honor.

[13] THE COURT: Very well.

### CROSS EXAMINATION

BY MR. McHALE:

Q. Now Miss Owens, on January 3rd of this year, what were you doing immediately before the time that you went into the ladies rest room where you say you were robbed?

A. I just had walked down the steps of the monument and was looking for the bathroom.

Q. Were you directed by anyone to the bathroom?

A. One of the concession stand people told me.

Q. And you paid no particular attention to any people who were around at that time?

A. No, sir.

Q. When you got into the bathroom how long were you in there before anyone else entered?

A. Two, three, maybe five minutes.

Q. During the period of time—at the time this other person entered you say you were in the stall of the bathroom?

A. Yes, sir.

Q. You didn't actually see anyone enter, then, you just heard; is that right?

A. Yes, sir.

Q. By that you mean that's correct; you didn't see anyone enter?

A. I don't quite understand what you mean.

[14] Q. From the stall where you were could you see the entrance to the bathroom?

A. No.

Q. When was the first time you became aware that someone else was inside the bathroom?

A. When the assailant immediately came by that little crack.

Q. At that time all you saw was the form of a body walking by the crack; is that correct?

A. No, sir.

Q. What did you see at that point?

A. At the point that I saw the person—I saw the person.

Q. How wide a crack are we talking about?

A. About four inches, I guess.

Q. And this person first walked by the crack—did he walk by the crack or did he come up to the crack and then stop?

A. Yes. He came straight to the crack and then he stopped.

Q. How long was he at this crack before you say he went into the next stall and climbed up on top of the toilet?

A. About one to two minutes.



Q. At the time you were looking at him through the crack from inside the stall you couldn't see but just the four inches that the crack allowed you to see through; is that [15] correct?

A. Yes.

Q. I think you testified on direct that the only time that you got to look at his face was approximately one and a half to two minutes when he was actually in the stall with you.

A. No, sir, I did get a good look at him then, but I also saw him when he stepped on the toilet in the stall next to mine.

Q. How long was he standing on the toilet?

A. About 30 to 45 seconds.

Q. At what point was this alleged gun produced?

A. Right immediately after I told him I didn't have \$10.

Q. That's when he started looking through the crack?

A. No, he wasn't looking through the crack when he was asking me for the stuff.

Q. So you couldn't see him at that point?

A. No, sir.

Q. How did you first see the gun? Was it stuck through the crack or over the top?

A. Over the top.

Q. And your testimony is at that point all you could see was the gun; you couldn't see the person?

A. Yes.

Q. Have you ever been robbed at gunpoint before?

[16] A. No.—No, counselor, I have not.

Q. Have you ever been robbed at all before?

A. No, counselor, I have not.

Q. How long was the gun over the top before the person with the gun came into view?

A. Okay—He pointed the gun over the top. I gave him the money—

Q. Again over the top?

A. Yes, sir. And he asked me for \$10 more. Probably a minute and a half was the amount of time it took.

Q. During this whole amount of time he's talking to you through the door; is that correct?

A. Yes.

Q. How long when the person stopped and looked into the crack, how long was it before he stuck the gun over the top of the stall?

A. Okay—Are you asking me the period of time?

Q. How long was your first sighting of him through the crack?

A. Maybe 15 or 20 seconds.

Q. And then you lost sighting of him for one or two minutes until he entered the store next door and climbed up on top of the toilet, then you saw him for approximately 30 seconds; is that right?

A. Possibly 35.

[17] Q. Then he got back down and went out in front of your stall again?

A. Yes, sir.

Q. How did he gain entry into your stall?

A. He asked for it.

Q. At this point where was the gun if you can remember?

A. When he asked for entry into the stall, you mean?

Q. Yes.

A. I don't remember.

Q. And then he came into the stall and he was in the stall for perhaps one and a half to two minutes; is that right?

A. Yes, sir.

Q. So out of the total of ten minutes or so that he was in the bathroom you had a good view of him for perhaps two to two and a half minutes?

A. Two and a half to three minutes, probably, yes.

Q. You testified on direct examination that the lighting in the bathroom was fluorescent lighting.

A. Yes, sir.

Q. Do you recall testifying before the Grand Jury in this case on the 25th of January of 1974?

A. Yes.

Q. And while you were testifying before the Grand Jury you were asked a series of questions and gave answers to those questions; is that right?

[18] A. Yes.

Q. Do you recall being asked at the Grand Jury and answering the following:

"Question. What was the lighting conditions in the ladies room?

"Answer. It wasn't as bright at this. It was just like regular light."

A. Yes, that's correct.

Q. By that did you mean regular bulb light?

A. I wasn't speaking particularly to the type of light it was; whether it was incandescent or fluorescent. I was speaking as to how bright it was in there.

Q. The lighting in the Grand Jury room is fluorescent, isn't it?

A. I don't remember.

Q. At any rate, you didn't describe it then as being fluorescent lighting?

A. No, I did not.

Q. Now, when you were shown photographs I believe on January 10 at Park Police Headquarters—How did you happen to get down to the Park Police Headquarters that morning?

A. A friend of mine drove me down there.

Q. Had the Park Police called you and told you to come down?

A. Yes, sir.

[19] Q. And they said what? They wanted you to look at some photographs of suspects or a suspect?

A. Yes. Detective Ore said that he had some more pictures for me to look at.

Q. Showing you what has been marked as Government's Exhibit 1. Can you recall how these photographs were shown to you?

A. Okay. They were shown to me in like chronological order. Like this one—they were in a folder (indicating), and there was a bunch of other pictures, too, of other cases, I guess.

Q. But the officers told you that these two pages (indicating) were photographs for your case?

A. No. They just said they were a bunch of photographs of people.

Q. Did they tell you where to start in the book?

A. No, they did not—well, he just turned the first page and then said to start from there.

Q. And these are in the book and you are flipping through the book; is that correct?

A. Yes.

Q. And I believe you say that you picked Number 6.

A. Yes, sir, that's correct.

Q. Was there any conversation going on between you and the Park Police as you were looking through the book?

[20] A. I don't really understand. What kind of conversation are you speaking of?

Q. Were you talking about the identification or were you talking about the robbery as you were looking through these pictures?

A. To be perfectly honest with you, counselor, I can't remember.

Q. When you got to the photograph album and page 6, can you recall what your words were?

A. Well—

Q. To the best of your recollection.

A. Well, my heart started beating very fast and I said—I started making all sorts of exclamatory noises that probably didn't make any sense.

Q. What were the first words you used to indicate that you were trying to make an identification?

A. I honestly don't remember. See, like I looked at this one (indicating) first, and then instantly my mind sort of focused on this picture because of my recollection of the robbery.

Q. Were there any other pictures of the group that you were shown that even in your mind remotely resembled the robber?

A. No, sir.

Q. There were no other photographs?

[21] A. Yes. That is correct. There were not any other photographs, counselor, that resembled the robber.

Q. At the evening of the lineup had you had occasion to discuss prior to your going into the lineup room the identification procedure that you would be going through on that evening?

A. Yes. I believe the policeman that was in charge explained the procedure.



Q. Had he indicated to you either that night or sometime previous to that night that the person whose photograph you identified previously would be in that lineup?

A. I don't correctly recall.

Q. Do you recall having any conversation about who might or might not be in the lineup with any Park Police or Metropolitan Police Officer?

A. I vaguely remember one of the detectives saying he might be in it or something. But I honestly can't remember.

Q. You have a vague recollection that he might be in it, meaning the person whose picture you picked out before might be in it?

A. Possible, but I really can't be sure.

Q. Showing you what has been marked as Government's Exhibit 2 for identification, I believe you indicated you picked Number 7 out of that lineup.

A. Yes.

[22] Q. How many other men would you say are in that line that you would put in the age group of 15 to 18 years old?

A. Possibly Number 5 and Number 11 I would possibly surmise his age to be around 18, and Number 9 and also Number 8.

Q. So then we're talking about Number 5 and Number 9 and Number 8—Out of those, how many—

MR. BENNER: Objection, Your Honor. I believe she included Number 11 also.

THE COURT: Is that correct?

THE WITNESS: Yes, sir.

BY MR. McHALE:

Q. Out of the four that you picked as being possibilities how many of those are wearing a large bush in that photograph?

MR. BENNER: Your Honor, the picture speaks for itself and the Court may inspect it. There's no need for the witness to describe what the picture portrays.

MR. McHALE: Your Honor, out of a lineup of ten people we're down to the witness saying she only was effectively looking at four or five.

MR. BENNER: She didn't say that, Your Honor. She answered as to how many people fell into a certain age group. I believe that was the question by defense counsel.

THE COURT: I understood her testimony to be Number 5, Number 9, Number 8 and Number 11 and Number 7.

[23] MR. McHALE: So given the description that she had given of the robber being between 15 and 18, the only conclusion one can draw is that those were the only five people she was looking at in that line. And I think there may be other indications that there were only one or two people that she was effectively looking at.

MR. BENNER: Your Honor, if I may state that's a conclusion possibly that the Court may care or may not care to draw. However, there's no need in having the witness describe the evidence itself. The picture, as the Court of Appeals has stated, speaks for itself. As to whether this lineup was suggestive or not can be best determined by having her recount what was said and what happened, by having the trier of fact and the question of law in this case at this point look at it himself.

THE COURT: Let me see the picture. Now what's your question, Mr. McHale?

MR. McHALE: How many persons in fact, Your Honor, she thought were between 15 and 18 years of age, and how many of those five people that she thought were between those ages have a large bush haircut.

THE COURT: You may answer the question.

THE WITNESS: Sir, I was more going on appearance than age. Age didn't really—

BY MR. McHALE:

[24] Q. The question is out of those five people that you thought were between 15 and 18 years of age, how many of those five people had a large bush style haircut?

A. I never said that my assailant had a large bush haircut so that thought never came into my mind.

Q. Aside from what you thought or saw, how many people that you viewed in that lineup—how many people in that age group had a large bush haircut?

A. Four, counselor.

Q. Four of the five that you say were between 15 and 18?

A. Yes, counselor.

Q. Now, of that group of five people that you say were between 15 and 18, Number 8 has facial hair—a mustache, does he not?

A. Yes, counselor.

Q. I believe you also indicated that Number 9 had facial hair; did you not?

A. Yes.

Q. And you also indicated that Number 11 was one of the people—Number 11 has a decidedly different hairstyle than that of Mr. Crews; isn't that correct? And he's also substantially taller; is he not?

A. Yes, counselor, that's correct.

Q. As to the identification that you made in Court today of Mr. Crews, just for the record, are there any other [25] or were there at the time you made the identification—were there any other Negro males in the courtroom?

A. I don't recall. There was this gentleman over here (indicating).

Q. You mean the gentleman sitting at the judge's bench?

A. Yes, sir.

MR. McHALE: No further questions, Your Honor.

MR. BENNER: Just one other question, Your Honor.

#### REDIRECT EXAMINATION

BY MR. BENNER:

Q. Miss Owens, when you looked through the lineup which is represented in Government's Exhibit 2, why did you identify Number 7 as the man who committed the assault upon you?

A. Because he looked like the guy who attacked me.

MR. BENNER: No further questions, Your Honor.

THE COURT: You may step down.

(Whereupon, the witness stepped down from the witness stand.)

THE COURT: We'll recess now until 1:00 o'clock.

(Whereupon, the proceedings were recessed at approximately 12:05 o'clock p.m.)

(Whereupon, the proceedings were resumed at approximately 1:10 o'clock p.m.)

MR. BENNER: Your Honor, the Government would call Anne Lawson at this time as the next witness for the [26] Government.

Thereupon,

ANNE L. LAWSON,

having been called as a witness for and on behalf of the Government, and after having been first duly sworn by the Deputy Clerk, was examined and testified, as follows:

#### DIRECT EXAMINATION

BY MR. BENNER:

Q. Miss Lawson, please state your full name.

A. Anne Louise Lawson.

Q. And your address, Miss Lawson.

A. Parker Road, Friedland, Maryland.

THE COURT: Please speak up loudly so we can hear you.

BY MR. BENNER:

Q. Miss Lawson, were you in Washington on January 6th of this year?

A. Yes, I was.

Q. At about 3:00 o'clock in the afternoon, did you go to the comfort station at the Washington Monument?

A. Yes, I did.

Q. Who did you go there with?

A. Sandra Denner.



Q. And what happened when you were at the comfort station?

[27] A. Well, I went into the stall and I heard a man's voice a few minutes after I went in. I didn't hear exactly what he said but I heard him demand money and I heard Sandy say, "All right, you can have it," and he made some sort of a threat toward her. And then afterwards he told her to get her friend out, so Sandy called me and I came out and he asked me for \$20 which I didn't have. I showed him my wallet, and my pocket book, that I didn't have any money, so he told us to wait for 20 minutes before leaving or he was going to be waiting for us. So after a few minutes, maybe five minutes, we left and nobody was out there.

Q. Was the man that you saw in the comfort station armed with anything?

A. Yes, he had a broken beer bottle.

Q. Would you tell us what the lighting conditions were on January 6th inside the comfort station.

A. It was brighter than it is in here.

Q. How far away were you from the man who was committing this attack after you came out of the stall?

A. About the distance from myself to this gentleman (indicating).

Q. To the reporter?

A. Yes.

Q. So you are indicating approximately five feet?

A. Yes.

[28] Q. Would you tell us what the man in the comfort station looked like?

A. He had a dark colored jacket and he was a Black man a little taller than myself. He had on a pea cap, a sort of stocking cap, and he was very dark complected and clean-shaven, no mustache or beard or anything.

Q. How tall are you?

A. Five four.

Q. Did you form any opinion as to how old this man was?

A. I wasn't sure but I knew he couldn't possibly be over 22 or 23. He had to be younger.

Q. How long a period of time did you look at this man while he was inside the comfort station?

A. Just a few minutes. I don't know exactly how long, but I was facing him so I did get a good view of him.

Q. Do you remember on the 13th of January an officer from the Park Police showed you a group of photographs?

A. Yes, sir.

Q. And did you identify someone from that group of photographs as being the man who assaulted you?

A. Yes, sir.

Q. I want to show you Government's Exhibit 1A and 1B. Would you tell us what that is, please.

A. These are the group of pictures I looked at.

Q. Which man did you pick out of there (indicating)?

[29] A. Number 6.

Q. Now, did you go to a lineup on January 21st in Police Headquarters?

A. Yes, I did.

Q. Did you pick somebody out of that line as the man who committed this offense?

A. Yes, I did.

Q. Would you take a look at Government's Exhibit 2. What is that, please?

A. That's a lineup.

Q. Which man did you identify in that lineup?

A. Number 7.

Q. For the record, please, would you take a look around the Court and see if you see the man in the courtroom who attempted to rob you on the 6th of January.

A. Yes, sir.

Q. Do you see him?

A. Yes, sir.

Q. Would you point to him, please.

A. The man over there (indicating).

MR. BENNER: May the record reflect she has identified the defendant.

THE COURT: Are you certain that's the man?

THE WITNESS: Yes, sir.

THE COURT: The record will show the witness identified [30] the defendant.

MR. BENNER: No further questions of this witness, Your Honor.

### CROSS EXAMINATION

BY MR. McHALE:

Q. Miss Lawson, you say when you first heard a man's voice inside of the bathroom you were in the stall at the time; is that correct?

A. Yes, sir.

Q. And you didn't see a man come in.

A. No, sir.

Q. How long were you in the stall before you came out of the stall.

A. Just a moment or two. I'm not really sure as to a definite length of time.

Q. How far along had the robbery gotten by the time you got out of the stall?

A. By the time I got out of the stall Mrs. Denner had given him the money and her pocketbook was all spread out on the counter.

Q. When you came out of the stall where was the robber?

A. He had Mrs. Denner around the neck.

Q. Was he facing you or was his back to you?

A. He was facing me and he had Mrs. Denner facing me also.

\* \* \*

[36] SANDRA DENNER,

having been called as a witness for and on behalf of the Government, and after having been first duly sworn by the Deputy Clerk, was examined and testified, as follows:

### DIRECT EXAMINATION

BY MR. BENNER:

Q. Miss Denner, please state your full name.

A. Sandra Denner.

Q. And your address, please.

A. I live in Manchester, Maryland.

Q. Mrs. Denner, were you in Washington on January 6th of this year at about 3:00 o'clock in the afternoon?

A. Yes, sir, I was.

Q. And where were you at that time?

A. At that time we had stopped to go to the rest room at the base of the hill of the Washington Monument.

Q. And were you with Anne Lawson at that time?

A. Yes, I was.

Q. And did you go inside the rest room?

A. Yes, we went inside the rest room.

Q. Would you tell us what happened when you went in there.

A. When we were inside the rest room I was up washing my hands at the basin, and the door opened behind me and I heard that, and an arm came around my shoulder and neck, and [37] something sharp was stuck in my back. I looked up and I saw a face in the mirror. And the guy asked me for \$20—excuse me, he asked me for \$10. And I said, "Okay, I'll give it to you." And I went to get it, but I didn't have \$10 with me. I only had a \$20 bill in my purse which I gave him. At that point he showed me that he had a beer bottle that was broken. He then told me to get my friend out of the stall and he pushed the beer bottle up against my stomach, the broken edge of it, and sort of threatened me with that to try to get my girlfriend to come out. So Anne came out and she told him she didn't have any money, and she showed him she didn't. Then he asked for the other girl who was also in there at the time to come out, and she refused to come out. He then left after that and told us not to come out for twenty minutes. That he was going to wait to see if we came out.

Q. How long approximately was it that this robber was in the comfort station with you?

A. I'd have to estimate—I would say about five minutes.

Q. During how much of that time were you able to look at his face?

A. Well, I was watching the beer bottle pretty closely and his eyes. I did get a look at his face for at least half of the time, and I could see his face. And he was holding me by the arm while I was getting my money out of the [38] purse.



Q. Was there adequate lighting in the restroom?

A. I would see the lighting was adequate, yes.

Q. You mentioned there was a third lady in there besides Miss Lawson. Who was that other lady?

A. I don't know what her name was. We never found out. She was just another young woman in there. Maybe 24, 25 years old or something like that.

Q. But you didn't know her?

A. No, I didn't.

Q. Do you remember seeing a group of pictures this morning in my office?

A. Yes.

Q. Would you tell us what was said when you were given these pictures; what I said to you and what did the detective say to you? Detective Ore.

A. He asked me to look at the pictures and he said that the suspect was among the pictures and for me just to look at them and see if I could recognize anyone. I looked at them and picked out two faces that I thought could possibly have been the person. One I felt a little stronger about than the other because of the fact that he had a mustache.

Q. Did they have numbers?

A. They were numbers 6 and 7.

Q. That's numbers 6 and 7 from Government's Exhibit 1A [39] and B; are those the two that you pointed out in my office this morning?

A. Yes. This one and this one (indicating).

Q. Of those two, which ones—which of those two looked more like the robber?

A. I thought it would be Number 6 because he had the mustache. Both of them from what I could remember were possible.

Q. Would you describe what kind of a mustache the man who robbed you had—Did the man that robbed you have a mustache?

A. I really couldn't say. But I remember him having a mustache of some sort, right.

Q. Do you remember if it was a thick or a thin mustache?

A. No, I couldn't tell you for sure.

Q. In your opinion was it a prominent or not so noticeable mustache?

A. I noticed it, so I don't know. I wouldn't say it was really something that really stood out, but I do remember he had a mustache.

Q. Did you ever go to a police lineup?

A. No.

Q. Did you ever see any photographs of possible suspects before this morning?

[40] A. No.

Q. Please look around the courtroom and tell me if you can see in this courtroom the man who robbed you.

A. I can't really say. It would be hard for me to say outright that this is the man that robbed me. I'd have to say possibly. But I can't say I am absolutely sure.

Q. And by the man you made reference to, is that the defendant seated at counsel table?

A. He'd be the only one.

Q. So your testimony with respect to the man that's seated at counsel table is that you couldn't be sure?

A. I'd have to say—I really can't be positive, but he looks similar from what I remember. That's all I can say. He looks similar.

MR. BENNER: No further questions, Your Honor.

## CROSS EXAMINATION

BY MR. McHALE:

Q. Miss Denner, what time did this incident occur on January 6th, do you recall?

A. About 3:00 o'clock in the afternoon.

Q. And when you went into the ladies room, how long had you been in there before someone followed you in?

A. I had just gone to the toilet. It was only two or three minutes after I'd gone in.

Q. When did you first notice the broken beer bottle?

\* \* \* \*

[48] MR. BENNER: Your Honor, I would call then, Mr. James Diggins to testify regarding the probable cause and the arrest.

MR. McHALE: Your Honor, the same objection.

THE COURT: I'll permit that at this time. You may call your policeman and then perhaps Mr. Diggins.

MR. BENNER: Very well, Your Honor. I would call Officer Rayfield.

Thereupon,

DAVID W. RAYFIELD,

having been called as a witness for and on behalf of the Government, and after having been first duly sworn by the Deputy Clerk, was examined and testified, as follows:

#### DIRECT EXAMINATION

BY MR. BENNER:

Q. Tell us your name, please.

A. David W. Rayfield.

Q. Are you an officer with the Park Police in Washington?

A. Yes, I am.

Q. Were you working on the 3rd of January of this year?

A. Yes, sir.

Q. Where were you working, sir?

A. At the Lincoln Memorial.

Q. Did there come to your attention, sir, that there was a robbery which was committed at the Washington Monument [49] area?

A. Yes, sir, there was a lookout broadcast at approximately 11:30 that there had been a robbery at the Washington Monument concession stand. The lookout was for a Negro male 15 to 18 years in age, slender built, wearing a V-necked T-shirt.

Q. Do you recall anything else about that lookout?

A. (No response.)

Q. Do you recall any other details that may have been broadcast concerning that lookout?

A. One factor that was brought out in the lookout was that the subject had a smooth complexion.

Q. Now, were you at work on the 6th of January?

A. No, the 6th was my day off.

Q. So you returned on the 7th; would that be correct—you returned to work on the 8th?

A. Yes.

Q. Did you hear any more about the crime on the 3rd or any subsequent crimes at the Washington Monument?

A. Yes. I reviewed—we have a complaint roster which contains the complaints which occur at the park, and at this time it is very slack at the parks and there aren't that much activity. And I am on the bicycle patrol, and we don't have an assigned area per se. We have pretty much freedom around the monuments. And I went through the [50] complaint records, and I looked through the complaint records for areas where I could best patrol and where I would be most needed. And I noticed another robbery had occurred at the Washington Monument concession on the 6th of January.

Q. And what did you learn about the robbery on the 6th?

A. That the subject that was being looked for in connection with this robbery had the same description and same MO as the previous robbery.

Q. Did you talk to any of your fellow officers concerning the robbery of either the 3rd or the 6th?

A. Yes. Station talk. We talked about the robberies. Everyone was aware they were happening, and most of the people in the District One area were aware that the robberies were taking place.

Q. In relation to those facts that you have already told us about, did you learn anything else about the alleged participants or perpetrators of the robbery on the 3rd and 6th by talking to your fellow officers?

A. No, I don't believe so.

Q. On the 9th of January were you at work on that day?

A. Yes.

Q. Do you recall an incident surrounding the arrest of a suspect on that day?

A. Yes.



Q. Would you tell us when you first noticed there was [51] a suspect around, and please describe to us what happened.

A. About 12:15 or 12:30 in the afternoon, I was at the Washington Monument concession on the west side having a cup of coffee. I observe a subject walking southbound on the south walk about 300 yards away from the monument concession stand. Officer Barg, another bicycle officer, was with me and we saw the subject walk south to the front of the monument concession stand and turn around and walk north and go into the men's room. The subject stayed in there about ten minutes, and at this time I observed a Mr. Dickens, a sightseeing guide, and I knew that he had seen a subject in the area of the monument concession on the day of the 3rd—the first robbery. So I asked Mr. Dickens if this subject looked familiar to him. At first he said, "I didn't get a good enough look." And I said, "Well, when he comes out of the restroom would you look at the subject and tell me if you can recognize him." As the subject walked north on 15th Street towards Madison Drive, Mr. Dickens said, "Yes, I believe that is the individual who was here on the day of the robbery."

Q. And what did you do after talking to Mr. Dickens?

A. At that time Officer Barg and myself approach the defendant in the area of 14th and Madison Drive—prior to this at the monument concession we approached him before Mr. Dickens identified him and ask him how old he was and [52] what was his name?

Q. Did he answer those questions?

A. Yes, he did. He had no identification, though.

Q. What did he say his name was?

A. Keith Crews, and he said he was 16 years old.

Q. On that first encounter before you talked to Mr. Dickens, did you have any encounter with Mr. Crews other than those two questions you just stated?

A. Well, there was more conversation. We asked him what he was doing in the area and wasn't he supposed to be in school. And he stated that he walked away from school. I believe Officer Barg told the defendant that we had been having some robberies in the area and he matched the description to some degree of the person we were looking for.

Q. How long did that first encounter last, officer?

A. Approximately three to five minutes. It was a very brief encounter.

Q. Then there came a second encounter after you talked to Mr. Dickens; is that right?

A. Yes. After Mr. Dickens said, "I believe this was the gentleman that was here on the 3rd," Officer Barg and I approached Mr. Crews again at 14th and Madison Drive, which is about a block and a half away.

Q. What took place when you approached him the second time?

[53] A. When we approached him the second time Detective Ore—Plainclothesman Ore who was handling the robbery case—I asked for him to respond to see what type of action he wanted to take since I knew he was working on the robbery case. At this time Detective Ore arrived and got out of his cruiser and attempted to take a photograph of the subject because he was a juvenile truant. It is our procedure to take photographs of all juveniles we deal with. The weather was extremely overcast and there was a light rain falling and the photograph did not turn out. So Detective Ore transported Mr. Crews to headquarters where he took a photograph—another photograph.

Q. How long did you detain Mr. Crews the second time until Detective Ore arrived?

A. Maybe ten or fifteen minutes.

Q. What happened during those few minutes.

A. Not very much. We just stood by and waited for Detective Ore to arrive.

Q. Did you tell Mr. Crews he was under arrest?

A. No.

Q. Would you tell us what the procedures of the Park Police and your procedure with respect to truants is. You've made several references to truants.

A. Well, when we come across an individual who is truant from school we take them to our headquarters and call [54] the school to confirm that they are in fact truant. And we call the parents of the juvenile and the parent usually tells us whether they want the juvenile brought home or taken back to school. In most cases we take the respondent back to school.

Q. Did you think, based on your descriptions—the description you had received of the robber and other conversations that you had—when you saw Mr. Crews did you think he was the person who committed the offenses on the 3rd and the 6th?

A. I had a suspicion that it was because the parks—at that time of the year the parks aren't really a tourist area and there aren't that many people around, and he was not certain where he was going when he arrived at the monument concession. As I stated, he walked south, turned around and walked north a little bit and then walked west and went to the men's area at the comfort station.

Q. Did you see him buy anything at the concession stand he went to?

A. No, sir. I watched him the duration of the time he was there except for a brief minute while he was in the comfort station, and he made no purchases.

Q. Were you in uniform that day?

A. Yes, sir.

Q. Did there come a time before you stopped Mr. Crews [55] that he appeared to notice you and your partner?

A. He could have noticed us. We were standing by the corner of the concession stand, and when he got up rather close we were visible to him. Whether he saw me or not I can't really say for sure.

Q. Could you tell us, officer, what conversation—what the conversation was that Mr. Dickens had with you? You say he told you something. What effect did that have on your actions?

A. That enforced my suspicions to believe that Mr. Crews was a possible suspect in this case.

Q. How long have you been a Park Policeman?

A. Four years July 27th.

Q. Were you in law enforcement before that?

A. Before that I worked for the Maryland State Police as an identification expert.

Q. Do you make many arrests for serious crimes in the parks in the course of your duties?

A. I've made a few. Serious crimes in the parks really aren't that prevalent. Mostly crimes like break-

ing into cars and that type of thing. By the time people discover their cars have been broken into the person responsible for the break-in is usually out of the area.

MR. BENNER: No further questions of this witness, Your Honor.

[56]

# CROSS EXAMINATION

BY MR. McHALE:

Q. Officer Rayfield, on January 9th, the day that you did make this arrest and took Mr. Crews from the Washington Monument to the Park Police Headquarters, the only description that you had other than a clothing description was simply a Negro male 15 to 18 with a smooth face; is that right?

A. A slender Negro male, 15 to 18, with a smooth complexion, yes sir.

Q. And no distinguishing marks?

A. No.

Q. And no description of hairstyle?

A. No.

Q. And no description of complexion, just smooth?

A. I don't recall a description of his complexion.

Q. And you said Mr. Crews was picked up and processed as a truant; is that right?

A. Yes, sir.

Q. Which entailed your taking him to Park Police Headquarters and photographing him and calling the school and calling the parents.

A. Yes, sir.

Q. And when you stopped him and inquired of him his name and age he told you his name was Keith Crews and he [57] gave you his age as 16; is that correct?

A. That's correct.

Q. Are you aware of what the age for mandatory school attendance is in the District of Columbia?

A. I believe it's 16 or under 16, I'm sorry.

Q. I believe that you also testified that although Mr. Crews had been picked up and processed as a truant you did have some suspicion that Mr. Crews had been the robber who had been there previously; is that right?

A. There was a suspicion, yes, sir.



MR. McHALE: No further questions.

THE COURT: Step down, sir.

(Whereupon, the witness stepped down from the witness stand.)

THE COURT: Mr. McHale, you don't contend that a person can't be a truant who is over the age of 16, do you?

MR. McHALE: I certainly do, Your Honor. I think the statute is clear that anyone over 16 is legally not a truant, whether his parents want him in school or not may be a different thing. But there certainly is no cause for arrest over the age of 16.

THE COURT: All right. Call your next witness.

MR. BENNER: The Government would call Detective Ore.

Thereupon,

CARL L. ORE,

[58] was called as a witness for and on behalf of the Government, and after having been first duly sworn by the Deputy Clerk, was examined and testified, as follows:

#### DIRECT EXAMINATION

BY MR. BENNER:

Q. Please state your name and occupation, please.

A. Carl L. Ore. I'm a detective with the United States Park Police.

Q. How long have you been a detective with the Park Police?

A. Two years.

Q. Before that did you have any previous law enforcement experience?

A. Yes, sir, I did.

Q. Would you tell us what that is?

A. Three years at the jail. I worked there three years as a tactical squad officer and patrolman.

Q. Detective Ore, did you receive a notification on the 9th of January that two patrolmen of the Park Police needed your services?

A. Yes, sir.

Q. Would you tell us what time that was, about?

A. Approximately 11:30, I think it was.

Q. Did you get the message directly?

A. By telephone, yes.

[59] Q. What was the contents of the message?

A. The contents of the message was that the bicycle men had contacted a man in the 1400 block of Madison Drive and that he resembled the description that was given in a robbery lookout.

Q. Did you have knowledge of robberies that had taken place on the 3rd and 6th of January?

A. Yes, sir, I did.

Q. When you got to 14th and Madison, would you tell us what happened when you got there and who you talked with?

A. I attempted to talk with the young man and I also wanted to take a picture, but it was raining quite hard, and we couldn't interview him in the rain, so I ordered him—the men to take him to Park Police Headquarters for interrogation and processing.

Q. Why did you want to take a picture of this man?

A. Because he did match the description that was given of the lookout.

Q. Then your intent for this picture was to show it to the compaining witnesses; is that right?

A. Yes, sir.

Q. Did you make an attempt to take a picture on the scene?

A. Yes, sir.

Q. How many times did you try?

[60] A. Four times.

Q. Did any of those pictures turn out?

A. No, sir, they didn't.

Q. Based on what you know of these crimes and the description et cetera—I'll strike that question. Do you have any knowledge of the description of the assailant involved in the crime on either the 3rd or the 6th?

A. I had knowledge and do have knowledge of both dates, yes.

Q. From what you saw of the man who had been stopped on the 9th, what was your opinion as to his culpability or not in these crimes?

A. I thought he matched the description.

Q. Would you tell us what—would you tell us what the Park Police procedure is with respect to truants?

A. Yes, sir. If a young man was stopped in the park and thought to be a truant but who had no other criminal conviction we would take the suspect in custody, take him to Park Police Headquarters, and then call the school and then call the parents to see if they had knowledge of the fact that the individual was not in school. And whatever decision we get there we would make a decision.

Q. How long was Mr. Crews at Park Police Headquarters before he was released?

A. I'm not sure, but I would say around an hour or so. [61] I'm not really certain how long he stayed.

Q. Did you take a picture of him at this time at the station?

A. Yes, sir.

Q. Was he handcuffed while he was there?

A. No, he wasn't handcuffed.

Q. Do you recall if he was advised of his rights at any time at the station?

A. I didn't. As a matter of fact, I didn't place him under arrest.

Q. So as far as you are concerned, Detective Ore, he was not under arrest?

A. No. When a child is taken in for truancy he's not under arrest.

Q. Did you find out anything about his school status?

A. Yes, I did.

Q. Would you tell us what you found out?

A. I understand—as a matter of fact, I went to the school and got a letter to this effect, that on the 3rd and on the 9th he was not in school.

Q. When did you first find out on the 9th that he was absent from school?

A. I called the school on the 9th.

Q. Did you show pictures to Mrs. Lawson and Miss Owens of possible suspects?

[62] A. Yes. I showed the pictures to Miss Owens and of course, one of our other officers showed the pictures to Miss Anne Lawson.

Q. Did they identify those pictures, if you know?

A. Yes.

Q. And who were they identified as?

A. Mr. Keith Crews.

Q. Were you present at the lineup on January 21st?

A. Yes, sir, I was.

Q. Who if anybody was identified?

A. Mr. Keith Crews.

Q. By both ladies?

A. By both ladies.

Q. And just this morning did you show pictures to a Miss Sandra Denner, D-e-n-n-e-r?

A. Yes, I did.

Q. Whom if anyone did she identify?

A. She chose the picture—I think Number 6 which was Mr. Keith Crews.

Q. Did she pick out any other picture?

A. She said 6 or 7, and she said mostly Number 6 because of the beard—not a beard but a mustache. She remembered a mustache.

MR. BENNER: No further questions of this witness.

[63] CROSS EXAMINATION

BY MR. McHALE:

Q. Detective Ore, on January 9th, the date Mr. Crews was picked up and taken to Park Police Headquarters the only description you had of the robber other than a clothing description was Negro male, 16 to 18 years of age and slender built?

A. Slender built, that's right.

Q. Now, you say that Mr. Crews was picked up and processed as a truant. Is that the way the Park Police ordinarily process truants? Do you know under the law what the definition of a truant is?

A. I think so.



Q. And what is that?

A. Any juvenile who should be in school.

Q. Do you know what age—what the law specifies as the age limit for school attendance is?

A. Yes.

Q. What is that?

A. 16 years of age.

Q. So that anyone over 16 years of age could not be classified as a truant; is that correct?

A. May I explain this. Mr. Crews did not have any identification or anything else to indicate his age as being 16 years of age, and this is the reason why he was taken to [64] headquarters in order to further the interrogation. And this was what was done.

Q. Mr. Crews told the officers he was 16 years of age, didn't he?

A. I'm not sure about that, sir, I wasn't there.

MR. McHALE: No further questions, Your Honor.

MR. BENNER: No further questions.

THE COURT: You may step down.

(Whereupon, the witness stepped down from the witness stand.)

MR. BENNER: The only other witness I would have, Your Honor, and I realize this is taking quite a long time, but that would be Mr. Dickens. I would proffer to the Court that if Mr. Dickens testified he would state as I have said regarding the arrest part, that he saw the man on the 3rd and he talked to the police officers and indicated that he thought that was the man who was there on the 3rd. If the Court would like to hear that testimony I'll put it on briefly.

THE COURT: I'll accept the proffer. Do you object to the proffer by the Government?

MR. McHALE: I don't object to the proffer but I object to the in-Court ID which Your Honor has already ruled on. I have no objection to the proffer made by the Government.

THE COURT: You do not object?

MR. McHALE: I do not object to that proffer, no.

\* \* \*

# [TESTIMONY OF KEITH CREWS]

[79] Q. What else did you have in your wallet?

A. The three pictures that I had in there but I gave them to a girl. They were black and white pictures.

Q. Are these the three that you had taken at Murphy's?

A. Yes.

Q. So then you had the pictures in your wallet that you had taken at Murphy's?

A. Right, but I don't have them here. I don't carry pictures around.

Q. Did you tell the officers when they stopped you that you had cut school?

A. No, sir. I told them I came down to get some pictures and I showed them the three pictures I had.

Q. Did you tell the officers you went to Shaw?

A. Yes, sir.

Q. Did you tell them you went there on that day because you had left the school?

A. Yes, sir.

Q. So then you told them you cut school, didn't you?

A. I told them I was going to get some pictures taken. I told them what time I left the school.

Q. Detective Ore tried to take a picture of you when he came up to you, didn't he?

A. Yes, sir.

Q. Did you care if he took that picture of you or [80] not?

A. Well, he told me to stand by the tree and I let him take a couple of pictures. I don't know if they came out or not. I just stood there and he took a couple of pictures.

Q. Did you ever tell him that you wanted to go and you didn't want to stand around there and have him take your picture?

A. No, I never said that.

Q. Didn't you tell them that you wanted them to leave you alone and you didn't want the police messing with you and you wanted them to go about their business?

A. No, I never said that.



Q. Did you mind that the police stopped you and talked with you?

A. Did you mind?

Q. Yes, did that bother you?

A. I had no idea they was going to stop me.

Q. Did the Park Police seize any identification from you or take anything from you?

A. They didn't take it from me, I gave it to them and they gave it back to me.

Q. Did they take anything from you?

A. They didn't take nothing from me.

Q. Did they take a watch from you?

[81] A. Yeah. After I got down to the station they took a watch and keys.

Q. You cut school on the 3rd of January too, didn't you?

A. I didn't cut school. I was in the basketball court playing basketball.

Q. But you weren't signed into any of your classes on the 3rd, were you?

MR. McHALE: Object, Your Honor.

MR. BENNER: That was another date, Your Honor. I was referring to the 3rd.

MR. McHALE: I think that's beyond the scope of direct, Your Honor. He can get into that during the trial.

MR. BENNER: One other question if I may.

BY MR. BENNER:

Q. I notice on the back of your library card it is written in in pen like a person's handwriting. It's written in your birthdate.

A. Yes, sir.

Q. When was that written on there?

A. When I first got my library card.

Q. Who wrote it on there?

A. The lady at the place.

MR. BENNER: No further questions, Your Honor.

THE COURT: You may step down.

\* \* \* \*

[97] MR. McHALE: Yes, Your Honor. As to the point—the defense's position, Your Honor, is that there was an intervening suggestive lineup and that any in-Court identification is inevitably the recollection of the initial lineup rather than the events that were testified to. That is the sort of thing that can taint an in-Court identification.

THE COURT: Are you saying that in all probability a young lady would be unable to identify an individual who faces her with a gun in a toilet stall if she sees him only for the second time in a Court of law? Is that what you're saying to me?

MR. McHALE: Your Honor, what I'm saying is that the problem with these situations is that if there is an intervening lineup that the recollection of the identification may be back to the person she picked out during the improper lineup rather than back to the initial incident. I'm suggesting that may be the case here. She's recollecting not the person she saw on the date of the robbery but she's recollecting the person she saw at the lineup. I think the cases are clear that there is a possibility that an intervening suggestive identification can taint an in-Court identification. And that even though the testimony might be this is the person, that the subtle influence of the suggestive intervening identification is such as to taint an in-Court identification. Without arguing any further, [98] my recollection of the proffer with regard to Mr. Dickens was not that he positively identified Mr. Crews as the person who was there on the 3rd, but rather there was something said about he looks like the man. As to that, we didn't dispute the fact that he would have said Mr. Crews looks like the man. Also as to Mr. Benner's cite regarding the *Adams* case, *Adams* did not deal with probable cause because probable cause was not raised, and the Court in its opinion did not deal with it. I would urge Your Honor in addition to deciding the suggestivity aspects of this to consider the probable cause aspects and the improper police procedure which brought Mr. Crews into the system initially, which we said we would suggest would cause all of the subsequent identifications to fall. That's a separate issue from the testimony of the complaining witnesses.

THE COURT: All right, gentlemen. We'll recess for a few minutes at this time.

(Whereupon, the proceedings were recessed at approximately 3:10 o'clock p.m.)

(Whereupon, the proceedings were resumed at approximately 3:18 o'clock p.m.)

THE COURT: With respect to the motion to suppress identification testimony filed herein and in consideration of the Government's opposition to the defendant's motion to suppress, the Court makes the following finding.

[99] FINDING OF THE COURT

THE COURT: Number one. That there did not exist probable cause for any arrest of the defendant, Keith Crews by the United States Park Police on the date in question. That the photo identification taken by the United States Park Police as well as the lineup photo identifications will be suppressed.

Secondly, the Court is of the opinion that there does exist a factual basis for an in-Court identification of the defendant, Keith Crews in that it has been sufficiently established from the testimony of witnesses presented by the Government so that the in-Court identification will be permitted. That is to say that the complaining witness, Carol Owens may testify during the course of the trial as she testified on the motion to suppress as well as the complaining witnesses Ann Lawson and Sandra Denner.

Mr. Clerk, would you get the jury panel.

MR. McHALE: Your Honor, before the jury arrives and is empaneled, would Your Honor make a finding as to whether aside from the independent source whether the in-Court ID should be suppressed because of a subterfuge arrest.

THE COURT: The in-Court identification of the defendant by the two complaining witnesses will not—is not suppressed.

MR. McHALE: For either reason?

[100] THE COURT: Yes.

MR. McHALE: Thank you, Your Honor.

THE COURT: Is the ruling clear to you?

MR. McHALE: Yes, Your Honor.

THE COURT: Is it clear to you, Mr. Benner?

MR. BENNER: Yes, sir. With respect to Mr. Dickens, Your Honor, is your ruling—

THE COURT: I accepted your proffer. Now, I thought we had agreed. I'll have the Court Reporter read that back if there is any dispute about it because I don't want either one of you to be of the opinion that the Court has made a ruling that it has not made. I understand you to tell me that Mr. Dickens had observed the defendant when he was in the presence of other people out there in the hall or that some conversations had transpired without identifying really who, but I would not permit him to testify for that purpose. But I did tell you on your proffer that I would permit him to testify in the course of the trial as to the fact that he could independently identify—

MR. BENNER: I'm sorry, Your Honor, I didn't understand. Will he then be allowed to make an identification based on an independent source basis?

THE COURT: That's correct.

MR. BENNER: Thank you, Your Honor.

(Whereupon, the motion was concluded at approximately 3:25 p.m.)

\* \* \*

[106] PROCEEDINGS

THE DEPUTY CLERK: This is the case of United States versus Keith Crews, Docket Number 10258-74.

THE COURT: Mr. Benner, will you call your first witness.

MR. BENNER: The Government would call Miss Carol Owens as the Government's first witness.

Thereupon,

CAROL OWENS,

having been called as a witness for and on behalf of the Government, and having been first duly sworn by the Deputy Clerk, was examined and testified, as follows:



## DIRECT EXAMINATION

BY MR. BENNER:

Q. Would you tell us your full name, please.

A. My name is Carol Owens.

Q. How old are you, Miss Owens?

A. I'm 19.

Q. Where do you live?

A. I'm a student at Wentworth College in Spokane, Washington.

Q. And what year are you in college?

A. Sophomore.

Q. Carol, were you in Washington, D.C. on January 3rd 1974?

[107] A. Yes, I was, sir. The school system I am in is called 4-1-4, which means one, the number one, stands for short term, and it is dedicated to studying one subject intensively. And there are opportunities for study tours. And I took a study tour here to Washington to study the Government firsthand.

Q. Do you remember in particular where you were on January 3rd at about 11:30 in the morning?

A. I was at the Washington Monument.

Q. And what were you doing? Were you just touring around?

A. I was just walking around.

Q. In particular, about 11:30, where did you find yourself?

A. Well, the comfort station.

Q. And where is that in respect to the Washington Monument?

A. Well, the Washington Monument is like on a hill and the comfort station is down towards the bottom of the hill.

Q. Would you tell us what happened when you got to the comfort station?

A. Well, I was just about ready to leave the stall when I saw two eyes peering—I was in the stall right next to the wall inside the comfort station when I saw two eyes [108] peering down through the crack where the door sort of meets the hinges by the wall.

Q. What did you do when you saw someone staring in?

A. I got frightened.

Q. Would you tell us what happened.

A. After that, the man—the person that was staring through the door put his hand over the door, and said, "Let me in." I said, "No, no, please don't." And then he asked for \$10. He said, "Give me \$10," and I lied to him. I told him I didn't have \$10, and he pointed a gun over the door, and I gave him the \$10 I did have. After that, he asked for \$10 more. At this time I honestly didn't have it and I offered him a Traveler's Check and he said, "I don't want no check." In order to prove I didn't have \$10 I showed him my purse and he climbed up—he stood on the toilet in the stall next to mine. And he looked into my purse and I showed him my purse and the inside of my wallet. And after that, after realizing that I didn't have \$10 he again asked for entrance into the stall. And at this time, after seeing the gun twice, I let him in the stall. Then the facts get kind of cloudy right here. I don't remember exactly the chronological order of how things happened. First, he kind of motioned towards his zipper, and the first thing I asked him was not to rape me. I was really scared he was going to rape me. Then—Let's see. I believe he reached for the [109] hem of my dress and indicated he wanted to see under it. I was wearing a long dress on that day, and I pleaded with him, "No, no, please don't." And he asked me if he could feel my breasts, and I still was really scared he was going to hurt me if I didn't let him do anything, so I let him feel my breasts. So he got up on my lap, sort of and he felt my breasts. Then he asked if he could suck them. He reached toward my blouse and I said, "No, no, please don't." He reached for his zipper again and said would I suck his penis and I said, "No, please don't make me do that." And I think after that I pleaded with him to leave. So then he left saying, "You better stay here for twenty minutes or I'm going to shoot you." So, like he left the stall, and I stayed there for like five or ten minutes and then I immediately ran to where my friend was and told him that I had been robbed.



Q. How much money did this person get from you?

A. Ten dollars.

Q. What was the first time that you had a good look at this person in the comfort station?

A. The first time I really got a good look at his face was when he climbed up on the toilet in the stall next to mine.

Q. And for how long a period was he standing on the toilet next to you?

[110] A. Oh, a couple of minutes, I guess. One or two minutes.

Q. How long did it seem to you that he was inside the stall with you?

A. For three or four minutes.

Q. Would you describe what this man looked like.

A. He was about five five or five eight. I kind of guessed how tall he was by where his head came in relationship to the door. I was just about as tall as the door was so like he came down about that much (indicating).

Q. What else can you tell us about him?

A. He was really dark; darkly complected and had a smooth complexion like he wasn't old enough to shave yet. I didn't see any razor stubble or anything like that. He didn't have any wrinkles around his eyes. I can't really describe his eyes. They seemed kind of big.

Q. Did you form an opinion as to how old he was?

A. I surmised that he was about 15 or 18 years old.

Q. What kind of clothes was he wearing?

A. I remember him wearing a ski-neck sweater with a T-shirt, and kind of a sloppy raincoat type of deal. It seemed to me to be sort of a raincoat. And jeans. And his pants I think were dark, although I don't believe they were Levi's.

Q. Did you notice his hair?

[111] A. He was wearing a pea cap or wool cap covering his hair.

Q. Did you get a chance to have—did you get a good look at the person, his face, very long?

A. I got a very good look at this person.

Q. Do you remember what he looks like?

A. Yes, I do.

Q. Do you have a picture of what he looks like in your mind?

A. Yes, sir.

Q. How long did the whole incident take place from the time the person came first in the restroom until the end?

A. Five or ten minutes, I would say.

Q. What kind of lights are inside the comfort station?

A. I don't really remember what type. I think they were fluorescent, but they were a little bit darker than this, but not very much so.

Q. Would you like around the courtroom and tell me if the person who robbed you on January 3rd is presently in the courtroom.

A. Yes, sir, he is.

Q. Would you point to him please.

A. That man sitting over there (indicating).

Q. Would you tell us for the record, what is he [112] wearing right now.

A. He's wearing—I don't know what kind of material that is, but it's kind of a sweater or a deal with a white collar. It's kind of a blue and striped.

Q. I ask you to take a good look at this man's face right now. Is there any doubt in your mind that that's the man that robbed you?

A. Sir, there's absolutely no doubt in my mind that this is the man that robbed me.

MR. BENNER: No further questions, Your Honor.

THE COURT: The record will show the witness identified the defendant. Mr. McHale?

MR. McHALE: Thank you, Your Honor.

## CROSS EXAMINATION

BY MR. McHALE:

Q. Miss Owens, if I understand your testimony correctly, you went to the bathroom at the Washington Monument and had been in the stall for a few minutes when this person came into the bathroom after you; is that right? He was following you?

A. Yes, sir.

Q. You say the first conversation you had with him was when he stuck a gun over the top of the door.

A. No, sir, that's not correct.

Q. When was the first conversation you had?

[113] A. The first conversation I had with the gentleman was when he stuck his hand over the door and asked to be let in to the stall.

Q. At that time you said you refused and you wouldn't let him in; is that right?

A. That's correct, sir.

Q. Was it at that point that this person stuck the gun over the door?

A. No, sir, that's not correct.

Q. At what point did the gun appear?

A. After he asked me for ten dollars.

Q. During this period of time when he stuck his hand over the door and asked you for money, you and he were talking through the stall door; is that correct?

A. That is correct, sir.

Q. And at the time you were speaking with him you couldn't see him.

A. At that point in time, yes, sir.

Q. How many minutes or how many seconds were you and he talking about him trying to get money before you saw a gun?

A. One or two, I guess. Not any more than that.

Q. And then a gun appeared and the gun was pointed over the top of the stall?

A. That's correct, sir.

[114] Q. At this point the person was still behind the closed door; is that correct?

A. Yes, sir.

Q. And he again asked you for ten dollars and you at that point gave it to him?

A. After I saw the gun, yes, sir.

Q. How did you give it to him? Did you hand it over the door?

A. Yes, sir.

Q. And it's at this point that this man then goes from behind—or from your vantage point behind the closed door to the next stall and climbs up onto the toilet.

A. Yes, sir, that's correct.

Q. Of course, when he's standing on the toilet in the next stall looking down you couldn't have any idea how tall he is; is that correct?

A. When he was standing on the toilet, yes, sir. I didn't have any idea.

Q. And then he has a further conversation with you at that point about more money?

A. Not exactly, sir. He asked me for the money before he got up on the toilet.

Q. Now, when he is on the toilet looking into the stall at you, how far in feet would you say the distance is between you?

[115] A. Would you please repeat the question?

Q. I'm sorry. How far away from you was he when he was standing in the adjoining stall on top of the toilet?

A. I can't give you an accurate measurement. I'd say my head was about here and he was about there (indicating).

Q. Would you say two to three feet?

A. I guess that's about two feet, yes, sir.

Q. How long was he standing on top of the toilet looking down into your stall before he got down and went back?

A. No more than one or two minutes. Just enough time to look through my purse and look in my wallet.

Q. Did you hand these things to him?

A. No, I didn't.

Q. You opened your purse and showed it to him; is that correct?

A. Yes.

Q. So at least part of the time he's standing up on top of the toilet looking down at you and looking at your purse, and you're showing him that you don't have anything in your purse; he's looking at your purse?

A. Not exactly, sir. I opened up the purse before he climbed up on the stall.

Q. And then did you hold it up and show him there's nothing in it?

[116] A. My purse and my wallet, yes, sir.

Q. And then this person gets down from the toilet and goes down back in front of the stall; is that correct?

A. Yes.



Q. And then he demands entry into your stall?

A. Yes.

Q. And it's at that point that you let him in?

A. Yes, sir, I did.

Q. And when he gained entry I think you said at one point he sat on your lap?

A. Yes, sir, that's correct.

Q. Were you in the toilet stall—were you seated or standing?

A. I was seated.

Q. So that any height comparisons you made of him would be from your vantage point while he was standing over you?

A. Yes, sir, that's correct.

Q. I believe you testified he comes in and at one point he reaches for his zipper and you plead with him. Then he sits on your lap. At the point he is sitting on your lap were you just within a few inches from him?

A. Yes, sir.

Q. And I think you described his face as being very smooth and no wrinkles and no facial hair at all. You said [117] he looked like he wasn't even old enough to shave; is that right?

A. I was surmising the facial hair around here (indicating).

Q. You were surmising?

A. I was making my judgment. I was making a judgment from it was like he was standing up in front of me.

Q. Let me make sure I understand. When he was seated on your lap were you face to face with him?

A. No.

Q. So at the point he sat on your lap you turned your face away from him; is that right?

A. That's correct.

Q. How long did that part of the incident last?

A. A matter of seconds, sir.

Q. So the only time you really saw his face was while he was in the adjoining stall and when he first entered your stall?

A. That is not correct, sir. He stood in front of me for at least two minutes.

Q. He stood in front of you? You mean when you were both inside the toilet stall?

A. That is correct, sir.

Q. Now, you were close enough to him to look at him and had he had a mustache or beard you would have noticed it, [118] wouldn't you?

A. If it was very very pronounced I would have noticed it, yes.

Q. You're not sure when you say he was clean-shaven?

A. I'm starting to get a little confused. Would you repeat that?

Q. I'm sorry. I understand your testimony to be on direct that he had a very smooth face and that he had no facial hair. In fact it looked like he wasn't old enough to shave. Are you saying now that you're not sure that he may have had some facial hair?

A. I didn't notice any at the time.

Q. I believe you also testified that he was very dark complected; is that right?

A. That's correct.

MR. McHALE: No further questions, Your Honor.

MR. BENNER: If I may on redirect, Your Honor?

#### REDIRECT EXAMINATION

BY MR. BENNER:

Q. How long a period of time would you tell us that you saw Mr. Crews when he was standing on the stall, up over the stall at the time you were looking at his face?

A. You mean when he was standing on the toilet?

Q. Yes.

A. I'd say a couple of minutes while he was looking [119] over into my stall.

Q. How long was it that he was standing inside the stall with you before he sat on your lap?

A. About three or four minutes.

Q. How long was it when he was on your lap?

A. Just a matter of seconds.

Q. Did you notice the man that committed this offense. Did he have any beard? By that I mean—I don't mean was it a grown out beard but did he have a shaved beard?

A. No, sir, he did not.



Q. Did you notice if he had a mustache?

A. I didn't notice a mustache.

Q. Would you have noticed if he had a mustache like mine, a long one?

A. Undoubtedly I would have, yes.

Q. Would you have noticed if he had a light mustache? The kind of mustache some young men have?

A. I honestly don't think I would have noticed that, no.

Q. Take a look at Mr. Crews right here in the courtroom (indicating). How would you describe, looking at him, his skin color? What is your opinion as to what his skin color is?

A. Very dark.

Q. Is that what you mean by very dark when you [120] described the man that robbed you?

A. Yes, sir. Very dark complected.

MR. BENNER: No further questions.

THE COURT: You may step down.

(Whereupon, the witness stepped down from the witness stand.)

MR. BENNER: I would ask that she remain, Your Honor. The Government would call as its next witness Mr. James Dickens.

MR. McHALE: Before Mr. Dickens enters, may we approach the bench?

THE COURT: Yes.

(Whereupon, counsel for both sides approached the bench and conferred with the Court, as follows:)

MR. McHALE: Your Honor, yesterday at the suppression hearing you indicated that Mr. Dickens could—after accepting Mr. Benner's proffer regarding the probable cause, you indicated Mr. Dickens could not make an in-Court identification. It seems to me, Your Honor, that at this point testimony by Mr. Dickens can only indicate to the jury that there is an in-Court identification, and probable cause is not before this jury. That has already been ruled upon.

MR. BENNER: I must have misunderstood your ruling. As I recall the witness will be allowed to make an

in-Court identification. I'm not going to put him on except to make an in-Court identification. I thought that was your ruling.

\* \* \*

[122] THE COURT: Are you self-employed?

THE WITNESS: Yes, sir.

BY MR. BENNER:

Q. Where do you live, Mr. Dickens?

A. I live in Prince Georges County in Maryland, sir.

Q. How long have you had this job as a sightseeing guide?

A. This is my 21st year.

THE COURT: Are you licensed?

THE WITNESS: Yes, sir.

BY MR. BENNER:

Q. You are licensed by the D. C. Government as a sightseeing guide; is that correct?

A. Yes, sir.

Q. Do you remember where you were on Thursday, January 3rd 1974? Were you working as a sightseeing guide that day?

A. Yes, sir.

Q. Where were you working?

A. I arrived at the Washington Monument about 11:15 and parked my car over on Madison Drive and I walked over in the area of the Tourmobile. I don't know if you're familiar with that area, but that's on 15th Street between Independence and Constitution.

[123] At some time that day, Mr. Dickens, did you talk to the Park Police about a robbery that had taken place?

A. They talked to me, yes.

Q. Will you tell us what conversation took place.

A. They asked me if I'd seen anyone standing around, and I told them that I had seen one person since I had been there standing around.

Q. Did you tell them what this person looked like or did you point him out?

A. I said I could point him out.

Q. Did you point him out on that day? Or was he still around?

A. I described the clothing he was wearing on that day to the best of my knowledge when they asked me about him. I described his clothing.

THE COURT: What do you mean by standing around?

MR. BENNER:

Q. Mr. Dickens, what do you mean by standing around?

A. Well, there are two information booths in that area of the Washington Monument near the souvenir shop. One I'd say is about 35 or 40 feet from the souvenir shop, and the other northward toward Constitution about a hundred yards farther. This person was standing in the area of the other information booth. That would be the one closest to Constitution Avenue.

[124] Q. Now, where is this concession stand? Where are they in relation to the comfort station?

A. The front of the building is a souvenir shop on—on the north side there's a men's restroom and on the south side is a ladies' room. And in the very rear is a refreshment stand. But it's all in the same building.

Q. Was there any particular reason why you happened to notice this particular individual standing around?

A. Well, he resembled someone that I knew.

Q. Who's the person he resembled?

A. A young fellow named Harry Fleming, Jr.

Q. How do you happen to know Harry Fleming, Jr.?

A. Well, I knew him—he worked in the Washington Monument when he came out of school a few years ago, and his father is a very good friend of mine who is also a sightseeing guide.

Q. How long have you known Mr. Fleming, Sr., and his son?

A. I knew Mr. Fleming about 21 years, and his son, I would say, I've known about four or five years.

Q. How old is Harry Fleming, Jr., do you know?

A. I would imagine he's about 24 or 25 at this time.

Q. And the man that you saw at this time, was that Harry Fleming, Jr.? The man that you saw on that date?

A. No.

[125] Q. Would you tell us about that, Mr. Dickens?

A. The young fellow I saw, he passed me on that day. And I spoke because he resembled the young man that I knew. But he didn't speak back. And so I looked and I knew that it was someone else because he was much shorter than the other boy that I knew.

Q. Do you know who this person that you saw on January 3rd was? Do you know him?

A. Yes, I think I do.

Q. Is he in the courtroom today, Mr. Dickens?

A. Yes, he is.

Q. Would you point him out, please?

A. That's the young fellow, right there (indicating).

Q. And where was he when you saw him on January 3rd?

A. He was standing at the kiosk. We call it the kiosk. It's those little buildings there that afford shelter when it's windy. He was standing real close as if he was waiting to be picked up or something.

Q. How long a period of time did you see him on January 3rd?

A. I would say about ten or fifteen minutes.

Q. What time of the day was this?

A. Between 11:15 and 11:30.

Q. And where was he on that day when you last saw him?

A. Well, he passed me and went southward. I never [126] paid any attention to him after I spoke and he didn't speak to me. I saw he was much shorter than the person, and a little younger.

Q. I notice, Mr. Dickens that you have one eye that's bad; is that right?

A. Yes. I'm blind in the left eye.

Q. How long have you been blind in that eye?

A. Since 1950.

Q. How about your right eye; how does that function?

A. I have excellent vision in my right eye.



Q. Do you know how it was rated; how the doctors rated your other eye?

A. 20/20.

Q. Will you take a good look at the gentleman seated right here. Can you see him from where you're sitting?

A. Yes, I can see him.

Q. You're sure that's the same person who you saw on January 3rd?

A. Almost positive.

MR. BENNER: No further questions, Your Honor.

### CROSS EXAMINATION

BY MR. McHALE:

Q. Mr. Dickens, you came into Court yesterday morning; is that right, to be a witness in this case?

A. Yes, sir.

\* \* \*

[132] Clerk, was examined and testified, as follows:

### DIRECT EXAMINATION

BY MR. BENNER:

Q. Please state your full name, Miss Denner.

A. Sandra Denner.

Q. Is it Miss or Missus?

A. Missus.

Q. Where do you live, Mrs. Denner?

A. Manchester, Maryland.

Q. And where is that in relation to Washington?

A. It's about 80 miles northeast of here.

Q. Are you employed, Mrs. Denner?

A. No, I'm a mother.

Q. Were you in Washington on January 6th of this year, 1974?

A. Yes, I was.

Q. Who did you go to Washington with?

A. I came with my husband, my brother-in-law, and his girlfriend, Ann Lawson.

Q. And what brought you to the city on that day?

A. We came to go to the Smithsonian Institute.

Q. At about 3:00 o'clock in the afternoon, do you recall where you were?

A. About that time I was in the rest station there at the bottom of the hill below the Washington Monument.

[133] Q. Would you tell us what happened.

A. Well, Ann Lawson and I went to the ladies' room, and I was finished using the toilet and was washing my hands in the wash basin. And someone came in behind me and put their arm around my neck and shoved something hard into my back and asked me to give him ten dollars. So I looked up into the mirror and I said, "I'll give it to you." And I reached to try to get the money out of my purse. At that point, he let go of me—he let go of my one arm while I tried to get the money out of my purse. I didn't have ten dollars. I had a twenty dollar bill, so I gave him that, and he at that time showed me that he had a broken beer bottle in one hand and threatened me with that, and said,—he put it up against my stomach and told me to get my friend to come out of the toilet. She was still in behind the door there. So I asked Ann to come out and she came out, and he asked her for her money, and she said she didn't have any and showed him that she didn't have any money. And there was another girl in there, too. And he asked her to come out and she refused to come out. So at that point he started to leave and he told us not to come out for twenty minutes, that he would be waiting for us if we did. So it was about two minutes later when another girl came in and we asked her if there was anybody waiting out there and she said no, so we left at that time.

[134] Q. Where was your husband and brother-in-law at that time?

A. They had taken the car to park it on the mall.

Q. How long a period of time was it that this person was in the comfort station with you?

A. It was a very short time. Maybe five minutes.

Q. Did you get a look at the person who robbed you?

A. I saw him—I could see his face in the mirror and I also saw him when I turned around to get my money.



Most of my attention, though, was on the broken beer bottle. But I did look at his face.

Q. How long a period of time did you get a chance to look at him?

A. I might have been able to—you know, really look at him for about half the time. I wasn't really watching him, though.

Q. What did the person look like that you can recall?

A. He was a young Black man and he had on a watchcap. And he had a round face, as opposed to a long type face. I remember that. And I think he was wearing a dark jacket at the time. He was just a few inches taller than I am. I'm about five four, so he was about five seven. He didn't seem to be particularly heavy or particularly thin, he was just medium built. I couldn't see much of his hair. I could see a little bit of hair sticking out below the watchcap. [135] It wasn't a real long hairdo, but it wasn't really long—his hair wasn't, but it wasn't particularly short either. I remember him also as having a mustache, too. But other than that there was nothing particularly distinguishing about his features.

Q. How old a man was he?

A. At the time I thought he might have been 20 or about that age.

Q. What kind of a mustache did he have?

A. It wasn't a very full mustache, but it was a mustache. I noticed and remembered that he had a mustache.

Q. What actually did this person take from you?

A. He just took a \$20 bill.

Q. Do you think you would be able to recognize that person if you saw him again?

A. I'd have trouble pinpointing exactly that person because I really wasn't concentrating that much on his features. Like I said, I could probably narrow it down to certain people I think it's not, but I couldn't point out the person exactly.

Q. Would you take a look around this courtroom and see if you see the man who robbed you.

MR. McHALE: Objection, Your Honor. She's already stated she couldn't identify the man. I think the only person here that's sitting here who she could reasonably point out [136] would be Mr. Crews. And she has already stated she couldn't do that.

MR. BENNER: We already had a hearing on this yesterday, Your Honor. This is not going to bring out—

THE COURT: I think both of you know what the witness is expected to answer. You've heard it before and you may answer, madam.

THE WITNESS: I'd have to say that the person who looks closest to this person would be the defendant.

BY MR. BENNER:

Q. Would you take a good look at the defendant, and by the defendant I mean this gentleman sitting right there (indicating). Please take a close look at him. Does he look in any way significantly different from the man that robbed you?

A. No. He doesn't look significantly different except for the fact that the man who robbed me had a watchcap on and his hair appeared obviously differently. But his facial features—like I say, he could be the man that robbed me.

Q. Exactly what do you mean by a watchcap?

A. A knit cap that you sort of pull down. I guess it's a pea cap.

MR. BENNER: Your Honor, for the record, I would state that there are 1, 2, 3, 4, 5 other young Black men in the courtroom aside from the defendant who are seated in the [137] spectator area.

BY MR. BENNER:

Q. Do any of those other men, Mrs. Denner, resemble the man that robbed you?

A. Not as closely as the defendant.

Q. So you would say of all the young Black men in this courtroom the defendant looks most closely to the person that robbed you?

A. Most like the person, yes.

Q. How would you describe, if I had asked you—my question would be, what is your degree of certainty or not as to the identification of the defendant? What would you tell us your degree of certainty is?

A. I would have to say I can't say this is the man for sure, but he looks like what I remember. He's as close as any people I've seen. That's all I can really say for certain.

MR. BENNER: No further questions.

THE COURT: Mr. McHale?

### CROSS EXAMINATION

BY MR. McHALE:

Q. Mrs. Denner, do you recall speaking at various times with Detective Noland from the Park Police?

A. I think I talked to him on the phone.

Q. Do you recall talking to him over the phone within two or three days after this incident occurred?

\* \* \*

[143] 10:45 o'clock a.m.)

(Whereupon, the proceedings resumed, with jury, at approximately 10:55 o'clock a.m.)

MR. BENNER: Your Honor, the Government would call Miss Ann Lawson.

Thereupon,

ANN L. LAWSON,

have been called as a witness for and on behalf of the Government, and having been first duly sworn by the Deputy Clerk, was examined and testified, as follows:

### DIRECT EXAMINATION

BY MR. BENNER:

Q. Please state your full name.

A. Ann Louise Lawson.

Q. How old are you, Miss Lawson?

A. 20 years old.

Q. And where do you live?

A. Parker Road, Freeland, Maryland.

Q. And what do you do in Freeland, Maryland? What is your job?

A. I'm a mold machine operator at Black and Decker.

Q. And did you come to Washington on January 6th with some of your friends?

A. Yes, I did.

Q. Who did you come with and what were you doing?

[144] A. I came with my boyfriend and his brother and Sandra Denner. We came to visit the Smithsonian Institute.

Q. Did Mrs. Denner's husband come along?

A. Yes, he did.

Q. What time did you get to Washington that day, do you know?

A. I guess it was a little before 3:00.

Q. And where did you go when you got here?

A. To the comfort station at the Washington Monument.

Q. Is that the very first place you went?

A. Yes, sir.

Q. Would you tell us what happened when you got there.

A. Mrs. Denner and I went into the bathroom, and a few moments after we went in there, we went to wash our hands, and a man entered the bathroom and asked for money. And told me to come out of the stall. When I came out he asked me for money also and told us then to wait for 20 minutes, and then he left.

Q. How long did you spend in the bathroom before the man came in?

A. It was only a few moments. It wasn't very long.

Q. Where were you actually at when this gentleman came in?

A. I was in the stall.

Q. What's the first thing that alerted you to the fact [145] that someone else was in there? Did you hear anything?

A. I heard a man's voice.



Q. Did you hear him say anything?

A. I thought I heard him ask for money of Mrs. Denner.

Q. Did you hear Mrs. Denner reply?

A. She said to take everything that she had.

Q. Where were you when all that was going on?

A. I was in the stall at the time.

Q. And how far were you away from the point that Mrs. Denner was?

A. Well, from myself to about where the defense attorney is there (indicating).

Q. About ten feet or something?

A. Yes, sir.

Q. How long was this person with Mrs. Denner before you came out of the stall?

A. It wasn't too long.

Q. Was it just a matter of minutes or longer?

A. Just a matter of minutes, I guess.

Q. Did you get a look at the person when you came out of the stall?

A. Yes, I did.

Q. Did you see him at any time before you came out?

A. No, sir.

Q. What did the person look like that you saw in the [146] bathroom on that date?

A. He was about a little taller than myself and a Black man. He had on a dark colored pea cap and a dark colored coat. And he had a beer bottle in his hand. He was very dark complected and smooth skinned.

Q. How tall are you?

A. I'm five foot four.

Q. What did the man do when you came out of the stall?

A. He asked me for \$20 and pointed the beer bottle at me. He had ahold of Mrs. Denner and they were both facing me.

Q. What kind of light was there in the comfort station?

A. Well, it was brighter than it is in this room now.

Q. It was brighter than this?

A. Yes.

Q. How about the day itself; was there any daylight in there at all?

A. I believe so, yes. I'm not positive about that. But I know it was very bright in there.

Q. What if anything did this fellow do after he got the money?

A. Well, I showed him I didn't have any money with me at the time. And he told me to wait 20 minutes before leaving the restroom, and then he left. A few moments later we left.

Q. How long would you say it was, if you could tell us, [147] that you were outside of the stall and looked at this fellow?

A. Well, maybe five minutes.

Q. And during this time did he do anything else other than ask you for money?

A. No.

Q. Did he go through your purse?

A. No, he didn't touch it.

Q. How did you show him you didn't have any money?

A. Well, I started to hand it to him and he wouldn't take it so I opened it up myself and took some of the things out. Then I opened my wallet and showed him that I didn't have any money at all.

Q. Do you think you'd be able to recognize that man again if you saw him?

A. Yes, I do.

Q. Did you feel that you would be able to recognize him after he left the bathroom? Did you have a picture of him in your mind at that time?

A. Yes, sir, I did.

Q. Did you get a good look at his face or not?

A. Yes, sir. My face was directly towards his.

Q. Please take a look at the people in the courtroom and tell us if you see the man that robbed you.

A. Yes, sir.

Q. Where is he?

[148] A. Sitting right there in the blue shirt (indicating).

Q. You can recognize him from where you are standing now?

A. Yes, sir, I sure can.



Q. Is that the man that robbed you?

A. Yes, sir.

Q. Is there any doubt in your mind that that's the man that robbed you?

A. No, sir, there isn't.

MR. BENNER: May the record reflect that the witness has identified Mr. Crews.

THE COURT: The record will show that the witness identified the defendant.

MR. BENNER: No further questions.

### CROSS EXAMINATION

BY MR. McHALE:

Q. Miss Lawson, when you first reported this robbery, part of the description of the man you say robbed you was that you guessed his age at somewhere around 22 or 23.

A. Not older than 22.

Q. Not older than 22 or 23.

A. Yes, sir.

Q. You described him as very dark complected?

A. Yes, sir.

Q. Now, when this person or this robber came into the [149] Washington Monument bathroom where you were, you were inside of the stall and couldn't see him when he entered; is that right?

A. Yes, sir, that's right.

Q. And he was having a conversation with Sandra Denner and you couldn't see him at that time; is that right?

A. Right.

Q. Now, when you were ordered to come out of the stall, did you immediately notice the broken beer bottle?

A. Yes, sir.

Q. How was this person holding it? Was he pointing it at you?

A. Yes, he was pointing it like this (indicating).

Q. Have you ever been robbed before with any kind of weapon?

A. No, sir, I haven't.

Q. I assume you were very frightened about this; is that right?

A. Yes, sir.

Q. Now, you described this person as being dark complected and having a very smooth face. That means clean-shaven, I guess?

A. Yes, sir. He had no beard. When I say clean-shaven I mean no beard like the United States Attorney has.

Q. What was the closest you got to this person at any point?

SUPREME COURT OF THE UNITED STATES

No. 78-777

UNITED STATES, PETITIONER

v.

KEITH CREWS

ORDER ALLOWING CERTIORARI

Filed February 21, 1979

The petition herein for a writ of certiorari to the District of Columbia Court of Appeals is granted.